requisites of a contract relation are lacking. The mortgagee is not a party to the agreement, and gave no consideration, either executed or promissory. In truth there are not two contracts, and thus the mortgagee must be regarded as a beneficiary with an independent vested right, if, as the court contends, he may recover irrespective of the owner's act. See 23 HARV. L. REV. 311; 27 *ibid.* 763. It is wrong, however, to place this construction on the absence of conditions appended to the mortgagee clause, which is better construed to give the mortgagee only a vicarious right. *Delaware Ins. Co.* v. *Greer*, 120 Fed. 916.

LANDLORD AND TENANT — RENT — DISTRESS: MAY TENANT'S RECEIVER ENJOIN DISTRESS FOR ADVANCE RENT? — The defendant leased premises to a company which agreed to pay rent yearly in advance. At the beginning of the second year it failed to pay as agreed and the defendant distrained for the rent. Later the company went into the hands of a liquidator, who seeks to enjoin the defendant from proceeding further with the distress. *Held*, that the injunction will not issue. *Venner's Electrical Cooking & Heating Appliances* v. *Thorpe*, 60 Sol. J. 27 (C. A.).

It is well settled that a receiver takes property subject to all claims against it, legal or equitable, in the hands of the person or corporation from whom he takes. *Chicago Title and Trust Co.* v. *Smith*, 158 Ill. 417, 41 N. E. 1076; *Commercial Pub. Co.* v. *Beckwith*, 167 N. Y. 329, 60 N. E. 642. Again it has been explicitly held that a distress previously levied for rent in arrears is valid against the receiver. *In re Roundwood Colliery Co.*, [1897] 1 Ch. 373. The fact, moreover, that a distress is levied immediately for rent due in advance, when the agreed time of payment is past, in no way impairs its validity. *Atkins* v. *Byrnes*, 71 Ill. 326; *London, etc. Discount Co.* v. *London, etc. Ry. Co.*, [1893] 2 Q. B. 49. The defendant, therefore, was quite within his legal rights in proceeding with the distress in the principal case. Where this is so, equity will interpose only where it appears necessary to restrain an unconscionable abuse of the right. See *In re Roundwood Colliery Co., supra*, 380. No sufficient evidence of inequitable conduct on the part of the defendant appearing, for he clearly was not acting inequitably in endeavoring to collect his due advance rent, the court seems properly to have denied the plaintiff's motion.

LIBEL AND SLANDER — DAMAGES — AGGRAVATION OF DAMAGES BY PLEA OF JUSTIFICATION. — In an action of libel the defendant pleaded truth in justification. *Held*, that the plea may be considered in aggravation of damages. *O'Malley* v. *Illinois Publishing and Printing Co.*, 51 Nat. Corp. Rep. 475 (App. Ct. of Ill., 1st Dist.).

It is well settled that "actual malice" in the publication of a defamation opens the defendant to exemplary damages. *Paxton* v. *Woodward*, 31 Mont. 195, 78 Pac. 215; *Lee* v. *Crump*, 146 Ala. 655, 40 So. 609. See ODGERS, SLANDER AND LIBEL, 5 ed., 389. By malice is meant not necessarily the defendant's knowledge of the falsity of the statement, but also his recklessness as to its truth, or his intent to injure the plaintiff. *Palmer* v. *Mahin*, 120 Fed. 737. See ODGERS, SLANDER AND LIBEL, 5 ed., 390. The weight of authority, including the principal case, holds that a plea of justification, if not proved, is evidence of malice in the original publication and hence aggravates damages. *Gorman* v. *Sutton*, 32 Pa. St. 247; *Krulic* v. *Petcoff*, 122 Minn. 517, 142 N. W. 897. See *Coffin* v. *Brown*, 94 Md. 190, 199, 50 Atl. 567, 570. Many courts, however, hold that the plea must be found to have been introduced in bad faith to be given this effect. *Fodor* v. *Fuchs*, 79 N. J. L. 529, 76 Atl. 1081; *Henderson* v. *Fox*, 83 Ga. 233, 9 S. E. 839. It is submitted that only if so introduced is the plea logically probative of either a carelessness of truth or an intent to injure. Of course no action itself could be brought on the plea, because it is absolutely